PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Lindsay M. Ulman, Jesse J. Williams, and Eric J. Hansen	
For:	MANUAL SPRAY CLEANER	
Serial No.:	10/604,780	Examiner: Lorna M. Douyon
Filed:	08/15/03	Group Art Unit: 1796
Atty. Docket:	71189-1501	Confirmation No: 1779

CERTIFICATE OF MAILING/TRANSMISSION (37 CFR 1.8(a))

I hereby certify that this correspondence is, on the date shown below, being:

☐ deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to the Commissioner for Patents, PO Box 1450, Alexandria, VA, 22313-1450.

☒ transmitted by facsimile to the Patent and Trademark Office via EFS Web..

/Christine M Judge/
Signature

Date: September 4, 2008

Christine M. Judge
(type or print name of person certifying)

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

REQUEST FOR RECONSIDERATION OF NOTICE OF PANEL DECISION FROM PRE-APPEAL BRIEF REVIEW

Applicants request reconsideration of the panel decision from Pre-appeal Brief Review mailed July 16, 2008, and received by Applicants on August 25, 2008.

In the Notice of Panel Decision from Pre-Appeal Brief Review, it was stated that the request was improper because "Rule 132 Declarations and exhibits accompanied the Pre-Appeal Brief Request.

Applicants believe that this holding was improper because no new declarations or exhibits have been filed with the Pre-Appeal Brief Request. Rule 132 Declarations and Exhibits were attached to the Pre-Appeal Brief Request. However, these documents were not new filings they were simply part of the record. In view of the fact that the record is so voluminous,

Applicants attached these documents in order to assist the panel in making its decision. If the panel would prefer to refer directly to the record rather than the attachments, the panel could simply discard the attachments because they are part of the record. A copy of the Request is enclosed for fling without the attached Declarations and exhibits.

Reconsideration of the decision to deny the Request for Pre-Appeal Brief Conference is respectfully requested. A Pre-Appeal Brief Conference is respectfully requested.

Respectfully submitted,

Dated: September 4, 2008

By: /John E McGarry/
John E. McGarry, Reg. No. 22,360
MCGARRY BAIR PC
171 Monroe Avenue, NW, Suite 600
Grand Rapids, Michigan 49503
616-742-3500

Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)
Approved for use through xx/xx/200x. OMB 0651-00xx
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional): 71189-1501

I hereby certify that this correspondence is being transmitted by EFS We to the U.S. Patent and Trademark Office to Examiner Necholus Ogden

on July 7, 2008

Signature /Christine M Judge/

Typed or printed name Christine M. Judge

Application Number	Filed
10/604,780	August 15, 2003

First Named Inventor: Jesse J. Williams

Art Unit	Examiner
1796	Lorna M. Douyon

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

- ☐ applicant/inventor.
- ☐ assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)
- ☑ attorney or agent of record. Registration number 22,360.
- ☐ attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____

/John E McGarry/
Signature

John E. McGarry
Typed or printed name

616-742-3500
Telephone number

July 7, 2008
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☑ *Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Privacy Act Statement

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Lindsay M. Ulman, Jesse J. Williams, and Eric J. Hansen	
For:	MANUAL SPRAY CLEANER	
Serial No.:	10/604,780	Examiner: Lorna M. Douyon
Filed:	08/15/03	Group Art Unit: 1796
Atty. Docket:	71189-1501	Confirmation No: 1779

CERTIFICATE OF MAILING/TRANSMISSION (37 CFR 1.8(a))

I hereby certify that this correspondence is, on the date shown below, being:

☐ deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to the Commissioner for Patents, PO Box 1450, Alexandria, VA, 22313-1450.

☒ transmitted by facsimile to the Patent and Trademark Office via EFS Web..

/Christine M Judge/
Signature

Date: July 7, 2008

Christine M. Judge
(type or print name of person certifying)

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

APPLICANTS' REASONS IN SUPPORT OF REQUEST FOR PRE-APPEAL BRIEF REVIEW OF FINAL REJECTION

This paper is filed in support of Applicants' Request for a Pre-Appeal Brief Conference in accordance with 1296 Off. Gaz. Pat. Office 67 (12 July 2005) entitled: "New Pre-Appeal Conference Pilot Program." (Extended January 10, 2006.) Applicants believe that the rejections of record are not proper and are without basis in fact or law. This request is based on clear legal and/or factual deficiencies in the rejections and not based on interpretation of claims or prior art teachings. The Examiner has not made a *prima facie* case of unpatentability of claim 49 under 35 U.S.C. § 103 as required by *In re Vaeck* 947 F.2d 488, 20 USPQ 2nd 1438 (Fed. Cir. 1991).

The Examiner has not made a *prima facie* case of unpatentability of claim 49.

Claim 49 as currently amended reads as follows:

49. (Currently Amended) A manual spray cleaner for removing dirt and stains comprising:

a first pressure chamber and a dispensing spray outlet for dispensing controlled amounts of fluids under pressure from the pressure chamber onto a surface to be cleaned;

a peroxide composition within and contained by the pressure chamber, and;

a propellant mixed with the peroxide composition to pressurize the oxidizing composition within the first pressure chamber to a level sufficient to spray the peroxide composition onto a surface to be cleaned;

wherein the first pressure chamber has an inner surface formed wholly from uncoated aluminum and the dispensing assembly is made from materials that are inert or resistant to the peroxide composition.

Claim 49 and its dependent claims 51, 52, 54, 96-98 and 115 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Seglin et al. US Patent No. 3,488,287 (Seglin et al. '287). Applicants' discussion of the Seglin et al. '287 reference and arguments as to the patentability of claim 49 over the Seglin et al. '287 reference are set forth on pages 12-15 of Applicants' Response to Office Action filed June 4, 2008.

The Examiner has failed to correctly assess the scope and content of the prior art in her application of Seglin et al. '287 to the rejection of claim 49 and its dependent claims. In particular, the Examiner has failed to consider the substantial amount of evidence in the file in determining the scope and content of the prior art and as a result has a flawed interpretation of Seglin et al. '287.

Seglin et al. '287 discloses a method for producing a warm lather comprising using the decomposition of hydrogen peroxide to provide heat and gas to foam a soap composition. As discussed previously in our response filed June 4, 2008, Seglin et al. '287 does not disclose a hydrogen peroxide and a propellant (resulting in an aerosol product) in a container formed from uncoated aluminum. The Examiner actually concedes this point in the Office Action mailed

April 4, 2008, p.3, ¶1. However, the Examiner has nevertheless drawn the unwarranted conclusion that it would have been obvious to one skilled in the art to place the hydrogen peroxide and propellant in an uncoated aluminum container. There is no basis in fact for drawing this conclusion from the disclosure of Seglin et al. '287 and is contrary to the evidence of record submitted by Applicants. Had the Examiner considered the secondary considerations set forth in the Declaration Under 37 C.F.R. § 132 of Eric Hanson, filed January 31, 2007, (Hansen Declaration), Declaration Under 37 CFR § 1.132 of William Stephen Tait, PhD, filed July 17, 2007, (Tait Declaration), article published in *Spray Technology & Marketing*, March 2006 of Dr. Tait, filed with Applicant's Response filed April 4, 2006, (Tait publication) and the Declaration Under 37 CFR § 1.132 of Montford A Johnsen, filed October 23, 2006, (Johnsen Declaration) all of record, she could not have reasonably concluded that it would have been obvious to one skilled in the art at the time of the invention to place the peroxide and propellant of Seglin et al. '287 in a container formed wholly from uncoated aluminum.

Mr. Johnsen has more than 50 years experience in the aerosol industry. Dr. Tait has more than 29 years experience in the field of corrosion of aerosol containers. Mr. Hansen has more than 20 years experience as a chemist in the field of cleaning products. Mr. Johnsen, in ¶15 of his Declaration, and Mr. Hansen, in¶5 of his Declaration, attest to the surprising stability of the hydrogen peroxide-propellant composition in an uncoated aluminum container. Further, Mr. Johnsen, in the same paragraph, attests to the problem of packaging hydrogen peroxide composition in an aerosol container of any sort. Mr. Johnsen further opines in the same paragraph that, as far as he is aware, there are no other hydrogen peroxide aerosol products in the country and no other aerosol products packaged in uncoated aluminum containers.

The Tait Declaration sets forth the expert qualifications of Dr. Tait. The Tait Publication unequivocally sets the standard for what is known in the art regarding aerosols and aluminum containers in an independent publication.

> Consequently, uncoated aluminum is very susceptible to corrosion, and aluminum aerosol containers without an internal lining cannot be used with aerosol products. (highlighted portion, 2nd column, last sentence)

The Tait Publication establishes that even as late as 2006, it was not known in the art that aerosol compositions could be stable in uncoated aluminum containers. Therefore, at the time that Applicants made their invention, it would not have been obvious to one skilled in the art to combine the hydrogen peroxide and propellant composition in an aerosol-type container formed from uncoated aluminum as the Examiner asserts.

The Hansen and Johnsen declarations attest to the secondary considerations that the Examiner has failed to seriously consider. Mr. Johnsen states in ¶15 of his Declaration that he is not aware of any other hydrogen peroxide aerosol products available in the United States nor any other aerosol products in general in uncoated aluminum containers. Applicants' first attempts to produce a hydrogen peroxide aerosol product were unsuccessful. Hansen Declaration ¶ 5. Johnsen Declaration ¶15. In their initial attempts, Applicants followed established protocol in the field and used aluminum containers with an organic lining. After these attempts proved unsuccessful, they tried using uncoated aluminum containers with the surprising result that the hydrogen peroxide and propellant were stable as an aerosol in an uncoated aluminum container. *Id*. Also, the product based on the concept of claim 49 has been very successful commercially and no products have been returned due to corrosion. Hansen Declaration ¶2, 6.

In addition, the Examiner has failed to show proper motivation for modifying the teachings of the prior art to produce the claimed invention. If the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification (see *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). As discussed in our response filed June 4, 2008, page 13 ¶ 2, if the device of Seglin et al. '287 was modified to contain hydrogen peroxide and a propellant at sufficient pressure to spray it onto a surface to be cleaned, as required in Applicants' claim 49, it could no longer perform its intended purpose, which is to produce a warm lather through the degradation of the hydrogen peroxide. The hydrogen peroxide of Seglin et al. '287 must be delivered to the reaction chamber at a slow enough rate, i.e. low pressure, to allow it to react with a catalyst and degrade. Without the degradation of the hydrogen peroxide, no heat and no gas will be formed and therefore the container will not be able to produce a warm lather.

Conclusion

The rejections made by the Examiner in her final rejection of the claims are not supportable in law or fact as set forth above. Reversal of the Examiner's rejection and allowance of the claims are respectfully requested.

Respectfully submitted,

Dated: July 7, 2008

By: /John E McGarry/

John E. McGarry, Reg. No. 22,360
MCGARRY BAIR PC
171 Monroe Avenue, NW, Suite 600
Grand Rapids, Michigan 49503
616-742-3500